

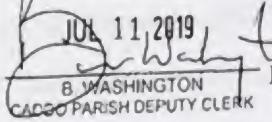
(3)

JAMES L. COLVIN

FILED

NUMBER: 121,633; SECTION 1

VERSUS

JUL 11 2019

 B. WASHINGTON
 CADDO PARISH DEPUTY CLERK

FIRST JUDICIAL DISTRICT COURT

ROBERT C. TANNER, WARDEN
 RAYBURN CORRECTIONAL
 CENTER

CADDO PARISH, LOUISIANA

RULING

On April 28, 1983, Petitioner James L. Colvin was convicted of Armed Robbery, a violation of La. R.S. 14: 64, and sentenced to serve eighty (80) years at hard labor without benefit of probation, parole, or suspension of sentence. On appeal, the Second Circuit Court of Appeal affirmed Petitioner's conviction and sentence. *State v. Colvin*, 452 So. 2d 1214, 1225 (La. App. 2d Cir. 1984), *writ denied*, 457 So. 2d 1199 (La. 1984). Petitioner has filed multiple Applications for Post-Conviction Relief, the most recent of which was denied by the Supreme Court of Louisiana on February 11, 2019, 17-KP-1840, (La. 2/11/19), ___ So. 3d ___.

Currently before the Court is Petitioner's Application for Post-Conviction Relief, filed on May 17, 2019. In his Application, Petitioner alleges five claims for relief: (1) that Louisiana's statutory scheme unconstitutionally defines "intoxication" and "insanity" identically, stripping him of the presumption of innocence, and that his trial counsel "admitted" his guilt when he and the State both improperly introduced bad acts and character evidence at trial; (2) that the State's expert witness included inadmissible hearsay statements in his testimony /^{to} violation of his rights under the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment; (3) that he was unable to cross-examine his trial counsel at the hearing for his Motion for New Trial in violation of his right to counsel and "self-representation" under the Sixth Amendment; (4) that he was sedated during trial, in violation of his rights under

the Sixth and Fourteenth Amendments, and that he was denied his choice of counsel under the Sixth Amendment; and (5) that the State did not disclose to him "exculpatory evidence," specifically, that his trial counsel was undergoing disbarment proceedings at the time of his trial, forcing him to proceed to trial with his trial counsel. On June 20, 2019, the State filed its Procedural Objection, asking this Court to dismiss Petitioner's Application, asserting that it is untimely and contains repetitive claims. For the following reasons, the State's procedural objection of timeliness is sustained and Petitioner's Application is DENIED.

Article 930.8 of the Louisiana Code of Criminal Procedure sets a two-year time limit for filing an application for post-conviction relief. La. Code Crim. Proc. art. 930.8. Specifically, Article 930.8 states,

"A. No application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered more than two years after the judgment of conviction and sentence has become final under the provisions of Article 914 or 922, unless any of the following apply:

(1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post-conviction claims that may exist. "Diligence" for the purposes of this Article is a subjective inquiry that must take into account the circumstances of the petitioner. Those circumstances shall include but are not limited to the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, or whether the interests of justice will be served by the consideration of new evidence. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery.

(2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.

(3) The application would already be barred by the provisions of this Article, but the application is filed on or before October 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.

(4) The person asserting the claim has been sentenced to death. La. Code Crim. Proc. art 930.8 (emphasis added).

If a petitioner fails to file his application for post-conviction relief within two years after his conviction and sentence become final, a court may only consider his application if he meets his burden of proof and shows that one of the four exceptions articulated under Article 930.8(A) applies. *State ex rel. Thomas v. State*, 2015-1493, (La. 9/16/16), 201 So. 3d 232. Otherwise, a court is justified in dismissing that application. *Id.* In the instant case, Petitioner contends that the exception articulated in Subsection (A)(2) of Article 930.8 applies to make his Application timely, as the Supreme Court of the United States' ruling in *McCoy v. Louisiana* was intended to clarify an unclear issue of constitutional law and applies retroactively to his case.

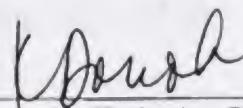
In *McCoy v. Louisiana*, the Supreme Court of the United States resolved a split amongst the state courts, holding that trial counsel could not concede a criminal defendant's guilt over his strenuous and adamant objections to that admission. *McCoy v. Louisiana*, No. 16-8255, slip op. at 11. (U.S. May 14, 2018). McCoy had been charged with three counts of First-Degree Murder after three people were shot and killed in his home in Bossier City, Louisiana. *Id.* at 2. Two weeks before trial, McCoy met with his trial counsel, Larry English, who expressed to him that he intended to concede that McCoy had committed the three murders and argue that he did not have the requisite mental state, thereby avoiding the death penalty. *Id.* at 3. McCoy furiously responded by telling English "not to make that concession," and insisted that Mr. English pursue acquittal instead. *Id.* Comparing McCoy's insistence on his innocence to Nixon's unresponsiveness when discussing trial strategy with his counsel in *Florida v. Nixon*, 543 U.S. 175 (2004), the Supreme Court of the United States ruled that it was a violation of a criminal defendant's Sixth Amendment right to assistance of counsel to embrace trial strategy that countered his client's will to maintain innocence. *McCoy*, at 9. Where the client declined to participate in his defense, however, only then could trial

counsel frame the defense in whatever manner he or she believes to be in his or her best interest. *Id.*

Ignoring the fact that Petitioner's Application was not filed within one year of the Supreme Court of the United States' ruling in *McCoy v. Louisiana*, Petitioner's Application is nevertheless untimely under Article 930.8(A)(2) and the claims contained therein must be dismissed. Only one of Petitioner's claims could potentially be construed as a *McCoy* claim, namely Claim One, where he alleges that his trial counsel, Nasib Nader, admitted his guilt by allowing the State to introduce without objection inadmissible evidence of prior bad acts and other character evidence. Petitioner does not assert that Mr. Nader actually conceded his guilt to the jury during his opening statement, direct and cross examination of the witnesses, or closing argument. More importantly, however, Petitioner cannot show that he strenuously voiced his objection to the admission of guilt by Mr. Nader and that his wishes were explicitly ignored by Mr. Nader. Likewise, his remaining claims, Claims Two through Five, are not *McCoy* claims. In Claims Two through Five, Petitioner asserts that he suffered from ineffective assistance of counsel, that he was not allowed to represent himself, that he was sedated at trial, and that the State failed to disclose favorable evidence. Petitioner bears the burden of proof on all of his claims, and has failed to show that any of his five claims involve the admission of his guilt by Mr. Nader over his steadfast objection. As Petitioner was put on notice that he had exhausted his right to collateral review, that he was required to prove that one of the exceptions articulated under Article 930.8(A) of the Louisiana Code of Criminal Procedure applied in order for the trial court to review any subsequent applications, and he cannot meet his burden of proof and show that his claims are timely, the State's procedural objection of timeliness must be sustained and his claims dismissed. See Exhibit 1 to this Ruling.

Accordingly, this Application is DENIED. The Clerk of Court is directed to provide a copy of this Ruling to the District Attorney and Petitioner.

Signed this 9th day of July, 2019, in Shreveport, Caddo Parish, Louisiana.



Honorable Katherine Clark Dorroh
District Judge
First Judicial District Court

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